

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67404; File No. SR-ISE-2012-62)

July 11, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees for Certain Orders Executed on the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 2, 2012, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend transaction fees for certain orders executed on the Exchange. The text of the proposed rule change is available on the Exchange’s website (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses a per contract transaction charge and provides rebates to market participants that add or remove liquidity from the Exchange (“maker/taker fees and rebates”) in a number of options classes (the “Select Symbols”).<sup>3</sup> For removing liquidity in the Select Symbols, the Exchange currently charges a “taker” fee of: (i) \$0.28 per contract for Market Maker<sup>4</sup> and Market Maker Plus orders,<sup>5</sup> and (ii) \$0.29 per contract for Firm Proprietary

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<sup>3</sup> Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange’s Schedule of Fees.

<sup>4</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

<sup>5</sup> A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between \$0.03 and \$5.00 (for options whose underlying stock’s previous trading day’s last sale price was less than or equal to \$100) and between \$0.10 and \$5.00 (for options whose underlying stock’s previous trading day’s last sale price was greater than \$100) in premium in each of the front two expiration months and 80% of the time for series trading between \$0.03 and \$5.00 (for options whose underlying stock’s previous trading day’s last sale price was less than or equal to \$100) and between \$0.10 and \$5.00 (for options whose underlying stock’s previous trading day’s last sale price was greater than \$100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker’s quoting statistics during that month. A Market Maker’s single best and single worst overall quoting days each month, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so qualifies a Market Maker for the rebate. If at the end of the month, a Market Maker meets the Exchange’s stated criteria, the Exchange rebates \$0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange’s stated criteria.

and Customer (Professional)<sup>6</sup> orders. The Exchange now proposes to increase the “taker” fee for Market Maker and Market Maker Plus orders in the Select Symbols from \$0.28 per contract to \$0.29 per contract, and for Firm Proprietary and Customer (Professional) orders in the Select Symbols from \$0.29 per contract to \$0.30 per contract. The Exchange is not proposing any change to the “taker” fee for Non-ISE Market Maker orders or Priority Customer<sup>7</sup> orders in the Select Symbols.

Further, for complex orders in the Select Symbols (excluding SPY), the Exchange currently charges a “taker” fee of: (i) \$0.34 per contract for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders. The Exchange now proposes to increase the complex order “taker” fee for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders in the Select Symbols (excluding SPY) from \$0.34 per contract to \$0.35 per contract. The Exchange is not proposing any change to the complex order “taker” fee for Non-ISE Market Maker orders or Priority Customer orders in the Select Symbols (excluding SPY).

Additionally, the Exchange provides ISE Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when ISE Market Makers remove liquidity in the Select Symbols (excluding SPY) from the complex order book. ISE Market Makers that remove liquidity in the Select Symbols (excluding SPY) from the complex order book by trading with Priority Customer orders that are preferenced to them will be charged \$0.33 per contract.

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<sup>6</sup> A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

<sup>7</sup> A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

The Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Select Symbols (excluding SPY) when these orders trade with non-Priority Customer orders in the complex order book. Specifically, the Exchange currently provides a rebate of \$0.32 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve certain average daily volume (ADV) of Priority Customer complex order contracts across all symbols executed during a calendar month are provided a rebate of \$0.33 per contract per leg in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; \$0.34 per contract per leg in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and \$0.345 per contract per leg in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the level of rebate for Members who achieve an ADV of 250,000 Priority Customer Complex contracts, from \$0.345 per contract per leg to \$0.35 per contract per leg.

The Exchange also currently provides volume-based tiered rebates for Priority Customer complex orders in option symbol SPY when these orders trade with non-Priority Customer orders in the complex order book. Specifically, the Exchange currently provides a rebate of \$0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in SPY in the complex order book. Additionally, Members who achieve certain ADV of Priority Customer complex order contracts in SPY during

a calendar month are provided a rebate of \$0.34 per contract per leg, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; \$0.35 per contract per leg, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and \$0.355 per contract per leg, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the level of rebate for Members who achieve an ADV of 250,000 Priority Customer Complex contracts in SPY, from \$0.355 per contract per leg to \$0.36 per contract per leg.

The Exchange has similar volume-based tiered rebates for Priority Customer complex orders in Non-Select Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book. Specifically, the Exchange currently provides a rebate of \$0.28 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve certain ADV of Priority Customer complex order contracts across all symbols executed during a calendar month are provided a rebate of \$0.21 [sic] per contract per leg in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; \$0.32 per contract per leg in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and \$0.325 per contract per leg in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. Again, the highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority

Customer complex orders in the complex order book executed by the Member during such calendar month.

In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders in the Non-Select Penny Pilot Symbols that they send to the Exchange, the Exchange now proposes to increase the base amount of the rebate to \$0.29 per contract. Additionally, the Exchange proposes to increase the amount of that rebate even further, on a month-by-month and Member-by-Member basis, if such Member achieves an ADV of Priority Customer complex order contracts across all symbols executed during the calendar month, as follows: if the Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount shall be \$0.31 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount shall be \$0.33 per contract per leg; and if the Member achieves an ADV of 250,000 Priority Customer complex order contracts, the rebate amount shall be \$0.34 per contract per leg.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the "Act")<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols.

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes that its proposal to assess a \$0.29 per contract “taker” fee for Market Maker and Market Maker Plus orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, NASDAQ OMX PHLX, Inc. (“PHLX”) currently charges Specialists \$0.33 per contract for removing liquidity in symbols that are subject to that exchange’s maker/taker fees.<sup>10</sup> Further, the proposed increase will align this fee to the fee the Exchange currently charges to other market participants that employ a similar trading strategy. The Exchange also notes that with this proposed rule change, the fee charged to Market Maker and Market Maker Plus orders will remain lower than the fee currently charged by the Exchange to certain other market participants.

The Exchange also believes that its proposal to assess a \$0.30 per contract “taker” fee for Firm Proprietary and Customer (Professional) orders in the Select Symbols is reasonable and equitably allocated because the fee is also within the range of fees assessed by other exchanges employing similar pricing schemes. By comparison, the proposed fees assessed to Firm Proprietary and Customer (Professional) orders are lower than the rates assessed by PHLX for similar orders. PHLX currently charges a “taker” fee of \$0.45 for Firm and Broker-Dealer orders and \$0.40 for Professional orders in its regular order book.<sup>11</sup>

The Exchange believes that the price differentiation between the various market participants is justified because Market Makers have obligations to the market that the other market participants do not. The Exchange believes that it is equitable to assess a higher fee to market participants that do not have the quoting requirements that Exchange Market Makers do.

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<sup>10</sup> See PHLX Fee Schedule at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

<sup>11</sup> Id.

The Exchange believes that its proposal to assess a \$0.35 per contract “taker” fee for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders in the Select Symbols (excluding SPY) is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower than the fees assessed by other exchanges. For example, PHLX currently charges \$0.37 per contract for removing liquidity in complex orders for Specialist orders and \$0.38 per contract for Firm and Professional orders.<sup>12</sup> Therefore, while ISE is proposing a fee increase for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders, the resulting fee remains lower than the fee currently charged by PHLX for similar orders.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. The Exchange notes that PHLX currently provides a similar discount. Accordingly, Market Makers who remove liquidity in the Select Symbols (excluding SPY) from the complex order book will be charged \$0.33 per contract when trading with Priority Customer orders that are preferenced to them. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these types of rebates, and is now merely proposing to increase those

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<sup>12</sup>

Id.

rebate amounts. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business in the symbols that are subject of this proposed rule change.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the symbols that are subject to this proposed rule change as its fees are competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>13</sup> At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2012-62 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2012-62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2012-62 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).